

REMARKS

Claims 40-43 and 46-60 are active in the present application.

Applicants wish to thank Examiner Chen for the indication that the objection to Claim 41 and the indefiniteness rejection of Claims 38 and 41-43 have been withdrawn. Although not explicitly stated, it also appears that the anticipation rejection over Pauley and Waterson has also been withdrawn. Reconsideration of the new grounds of rejection is requested.

The rejections of: (a) Claim 57 under 35 U.S.C. §102(a) over Alliel et al (*C.R. Acad. Sci. Paris*, Life Sciences (Oct. 1998), v. 321, p 857-863) and (b) Claims 41-42 under 35 U.S.C. §103(a) over Alliel et al (*C.R. Acad. Sci. Paris*, Life Sciences (Oct. 1998), v. 321, p 857-863) in view of Perron (US 6,184,025) is traversed.

Applicants note that Alliel et al was published in October, 1998. In contrast, the present application is a National Stage (371) of PCT/FR99/01513 (filed on June 23, 1999), which claims priority to FR 98 07920 (filed on June 23, 1998). To perfect their claim of priority, Applicants **submit herewith** a certified English translation of the priority document FR 98 07920. Based on the earlier filing date, Applicants request that the Examiner acknowledge that Alliel et al is not prior art against the present claims and that the rejections based on this reference should be withdrawn.

Withdrawal of these grounds of rejection is requested.

The rejection of Claims 41-43 and 57-60 under 35 U.S.C. §112, second paragraph, is obviated in part and traversed in part.

In regard to the rejection of Claim 57, Applicants note that the objectionable term “derived from” has been removed from this claim. Accordingly, Claim 57 is believed to be free of the Examiner’s criticisms.

Applicants also note that Claims 59 and 60 have been amended to be free of the Examiner’s criticisms. Therefore, the rejection of these claims is believed to no longer be valid.

Finally, the Examiner has also rejected Claim 41 as being indefinite due to the recitation of the term “differential detection.” It is the Examiner’s opinion that some basis must be given for this term. Applicants note that this term would be readily understood by the skilled artisan based both on the general knowledge available in the art and the present specification, for example at page 19, lines 30-38. Specifically, the term “differential detection” relates to the analysis of HERV-7q sequence in a nucleic acid sample from a patient suspected of a disease as compared to a reference sample from a “normal” individual. In other words, this term relates to a comparative expression profile analysis between patients that possess a neuropathologic condition related to HERV and those that do not.

Further support for the definiteness of the term “differential detection” is provided by the specification at page 22, lines 4-24, which indicates that the differential detection involves the comparison of HERV-7q sequences between patients and normal individuals. The differential detection serves as a reference for establishing the diagnosis of cancer or neuropathological conditions.

In view of the present amendments and remarks, Applicants request withdrawal of this ground of rejection.

The objection of Claims 41, 57, and 58 for reciting non-elected sequences is traversed.

The Examiner has objected to the claims as containing non-elected subject matter. However, Applicants note the objected to material are withdrawn species of elected Group III. Therefore, should the elected species be found allowable, the Office should expand its search to include the non-elected species and, as such, no amendment is believed to be necessary at this time.

Withdrawal of this ground of objection is requested.

Further, Applicants remind the Examiner that MPEP §821.04 states:

...if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim *will be* rejoined.  
(*emphasis added*)

Accordingly, Applicants respectfully submit that the non-elected process claims *must* be rejoined following allowance of the elected claims.

Applicants submit that the present application is in condition for allowance. Early notification to this effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon



Vincent K. Shier, Ph.D.  
Registration No. 50,552

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413-2220  
(OSMMN 08/03)